



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 92- 6

Jean Duncan  
Administrative Officer  
Kansas Real Estate Appraisal Board  
Landon State Office Bldg., Room 501  
Topeka, Kansas 66612

Re: Personal and Real Property -- Real Estate  
Appraisers -- Certification; When Required; Use of  
Title Without Certification

Synopsis: K.S.A. 1990 Supp. 58-4101 et seq., as  
amended by L. 1991, ch. 164, prohibits persons  
who have not obtained a state issued certificate or  
license from assuming or using the title of state  
certified or licensed appraiser or any title,  
designation or abbreviation likely to create the  
impression of state certification. It is our  
opinion that the use of the title "Certified Kansas  
Appraiser" (CKA) creates the impression of state  
certification as a real estate appraiser, and thus,  
such designation may not be used by persons unless  
they have in fact received a certificate from the  
state. Cited herein: K.S.A. 1-201; 7-103; K.S.A.  
1990 Supp. 58-4101, 58-4102, 58-4103, 58-4109,  
all as amended by L. 1991, ch. 164, §§ 1-9;  
K.S.A. 65-1808; 65-1901; 65-1114; 65-2801; 74-139;  
74-7001; 74-7501; 12 U.S.C. § 3331.

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Dear Ms. Duncan:

As administrative officer for the Kansas real estate commission, and on behalf of the Kansas real estate appraisal board, you request our opinion on whether K.S.A. 58-4103, as amended, prohibits the use of the designation of "Certified Kansas Appraiser" (CKA) by persons who are, as yet, unlicensed and uncertified by the state. This opinion request results from the use of the CKA designation by members of the Institute of Certified Kansas Appraisers, Inc. (ICKA). You also ask whether we believe it appropriate for the appraisers act to be amended to exempt the members of this organization from prior certification requirements imposed by the act, thus allowing them to continue use of the CKA designation until December 1993.

In 1990 the state legislature enacted K.S.A. 58-4101 et seq. and created the "state certified real estate appraisers act." L. 1991, ch. 164 changed the title of the act to the "state certified and licensed real property appraisers act." In adopting this act, the Kansas legislature was cognizant of recent federal action in the same arena; 12 U.S.C. § 3331 et seq. See K.S.A. 1990 Supp. 58-4102(g), as amended by L. 1991, ch. 164, § 2.

K.S.A. 1990 Supp. 58-4103, as amended by L. 1991, ch. 164, § 3, provides in pertinent part:

"(a) Except as provided in subsection (b), no person, other than a state certified real estate or licensed appraiser, shall:

"(1) Engage in any written appraisal in connection with a federally related transaction for which certification or licensure is required pursuant to federal law; or

"(2) assume or use the title of state certified or licensed appraiser or any title, designation or abbreviation likely to create the impression of certification as a real estate appraiser by this state.

"(b) The board shall recognize on a temporary basis the certification or

license of an appraiser issued by another state in accordance with federal law if:

"(1) The property to be appraised is part of a federally related transaction pursuant to federal law;

"(2) the appraiser's business in this state is of a temporary nature; and

"(3) the appraiser registers with the board, as prescribed by the board."  
(Emphasis added).

We do not have information that would lead us to conclude that K.S.A. 1990 Supp. 58-4103(b), as amended, would apply to the members of ICKA. For purposes of this opinion we must therefore assume that individuals using the CKA designation granted to them by ICKA are not certified or licensed by another state. Rather, from information provided, it appears that individuals using the CKA designation granted by ICKA obtained such a title by complying with requirements established by that group.

The ICKA was incorporated in 1976 as a private organization, and in November 1991, it completed a merger with the Kansas County Appraiser's Association. The provided 1976 by-laws of ICKA do not establish the procedures or requirements applicable to an individual seeking CKA designation. The "synopsis of CKA organization" provided to us briefly addresses the standards and testing used to decide if an individual will be given the CKA designation by ICKA. However, the issue is not whether ICKA has the same or similar standards or requirements applicable to those being used by the state. The issue is whether the CKA title may legally be used by persons who have not obtained an appraiser certificate or license from the state board. ICKA is not the entity given licensing or certification authority pursuant to K.S.A. 1990 Supp. 58-4101 et seq. Rather, this act permits such certification or licensure by the real estate appraisal board (board). Unless exempted by subsection (b) of K.S.A. 1990 Supp. 58-4103, as amended, state law now requires certification by the board before persons can engage in the activities set forth in subsection (a) of that statute. See also K.S.A. 1990 Supp. 58-4102(1), as amended (definition of "state certified appraiser"). K.S.A. 1990 Supp. 58-4109, as amended by L. 1991, ch. 164, § 9, permits the board to issue "transitional licenses" and

subsection (g) of that statute and its amendment provide in pertinent part:

"(g) The board may approve applications for transitional licenses received prior to December 31, 1991, if the board determines the applicant has met the education and examination requirements established for state licensed appraisers.

"A transitional license shall expire on the next June 30 after issuance and shall not be renewed more than one time. The license shall include a statement that it is a transitional license and that it may be renewed one time only. If the transitional license is renewed, the renewed license shall include a statement that it may not be renewed and extended beyond the expiration date appearing on the license.

"The holder of a transitional license may obtain forms from the commission to submit evidence of having completed the experience requirements established for state licensed appraisers. If the board approves issuance of a license prior to the expiration date of the transitional license, the applicant shall return the transitional license to the commission.

"Except as provided in this subsection, applicants for transitional licenses and holders of transitional licenses are subject to all provisions of this act and any rules and regulations adopted hereunder."

This provision permits a transitional license to be issued, provided that an individual obtaining such approval be granted this transitional license by the board. The individual is not exempted from the prohibition set forth at K.S.A. 1990 Supp. 58-4103(a), as amended, but rather, may qualify for a transitional license from the state prior to complete compliance with the licensing act. Without obtaining certification or licensure from the board, an individual may

not engage in the activities prohibited by K.S.A. 1990 Supp. 58-4103(a), as amended.

State requirements imposed upon the permissible use of a professional title or skill, are within the scope of a state's police power. 51 Am.Jur.2d Licenses, § 14 (1970). E.g., K.S.A. 7-103 et seq. (attorneys); K.S.A. 74-7501 et seq. (psychologists, social workers and counselors); K.S.A. 74-139, and 74-7001 et seq. (architects); K.S.A. 1-201 et seq. (accountants); K.S.A. 65-1808 et seq. (barbers); K.S.A. 65-1901 et seq. (cosmetologists); K.S.A. 65-1114 et seq. (nurses); and K.S.A. 65-2801 et seq. (physicians and surgeons).

K.S.A. 1990 Supp. 58-4103(a)(2), as amended, prohibits unlicensed individuals from assuming or using the title of state certified appraiser or any other title or designation likely to create the impression of such certification. We note that K.S.A. 1990 Supp. 58-4101 et seq. permits the practice of appraisal by unlicensed persons in some situations. E.g., K.S.A. 1990 Supp. 58-4103(d), as amended. However, it is not the practice of appraisal that subsection (a)(2) speaks to, but rather, the use of a title or designation. It is not difficult for this office to conclude that an individual using the title or designation of "certified Kansas appraiser" creates the impression that the person is certified or licensed by the state, pursuant to K.S.A. 1990 Supp. 58-4301 et seq., as amended. It is therefore our opinion that such a title or designation should not be used by an individual unless that person is properly certified or licensed by the state. Such use may expose the individual to the class B misdemeanor sanctions authorized by K.S.A. 1990 Supp. 58-4103(c), as amended.

With regard to your request that we also address the appropriateness of legislative amendment to allow such designation to be temporarily used by members of ICKA prior to their obtaining a state certificate or license, we believe policy decisions are best left to lawmakers. However, we would suggest that any such amendment consider time limitations and provide for some ultimate or final state action or review of ICKA credentialing procedures. Such measures could avoid problems with unlawful delegation of legislative authority.

In conclusion, K.S.A. 1990 Supp. 58-4101 et seq., as amended by L. 1991, ch. 164, prohibits persons who have not obtained a state license or certificate from assuming or using

the title of state certified or licensed appraiser or any title, designation or abbreviation likely to create the impression of state certification. It is our opinion that the use of the title "Certified Kansas Appraiser" (CKA) creates the impression of state certification as a real estate appraiser, and thus, such designation may not be used by persons unless they have in fact received a certificate or license from the state.

Very truly yours,



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